JACK R. COOMBS

IBLA 76-749 Decided November 9, 1976

Appeal from a decision of the Utah State Office, Bureau of Land Management, canceling oil and gas lease U-30602.

Set aside and remanded.

1. Oil and Gas Leases: Cancellation--Oil and Gas Leases: Rentals--Notice: Generally

> Where the Bureau of Land Management sends notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying his noncompetitive oil and gas lease offer is deficient and such notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

APPEARANCES: John S. Kirkham, Esq., Van Cott, Bagley, Cornwall & McCarthy, P.C., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On July 17, 1975, Jack R. Coombs filed an oil and gas lease offer (U-30602) with the Utah State Office, Bureau of Land Management (BLM), for certain lands in Millard County, Utah. Appellant submitted $1,214.00 in advance rental at the time of filing the lease.

On May 19, 1976, a lease for such lands was issued with an effective date of June 1, 1976. By decision dated July 20, 1976, BLM canceled the lease. The decision stated that appellant's advance rental payment had been deficient by $7.00; that a bill (No. A-025059) was issued for the additional rental due and the bill stated that "in accordance with 43 CFR 3103.3-1, the additional rental must be paid within 30 days from notice under penalty of cancellation of the lease"; that the bill was mailed by certified mail and first post office notice given to appellant on May 20, 1976, second notice on May 27, and then, on June 4, the envelope was returned. BLM received the envelope June 7, 1976, with the post office explanation checked "Unclaimed."

The decision concluded that because appellant failed to pay the deficiency, the lease was canceled and the rental forfeited to the United States.

On appeal appellant states that due to the nature of his business he maintains a residence and business office in two areas under the addresses:

(1) 2581 East 1300 South
Salt Lake City, Utah 84108

(2) P.O. Box 73
Cheney, Washington 99004

In November 1975 appellant left Cheney for his Salt Lake City address and he filed a notice of change of address with the post office in Cheney indicating his mail should be forwarded until April 1, 1976. Appellant asserts that when he realized he would not be returning to Cheney in April, he wrote the post office stating that his mail should be forwarded to the Salt Lake City address until June 15, 1976. Although the Cheney Post Office was unable to find such letter, appellant states that the original lease U-30602 was delivered to him in Salt Lake City after having been forwarded from the Cheney Post Office in late May 1976. 1/ The bill for additional rental was addressed to appellant's Cheney address and was not forwarded, but was returned marked "Unclaimed."

1/ It appears that on May 19, 1976, BLM mailed a copy of lease U-30602 by ordinary mail and the bill for the deficient rental by certified mail, each envelope addressed to Jack R. Coombs, Box 73, Cheney, Washington 99004. In accordance with appellant's instructions to the post office, the lease was forwarded to Salt Lake City; however, the envelope containing the bill was not forwarded. This action by the post office is sufficient evidence to establish that appellant did indeed file a request that his mail be forwarded.

Appellant states that at all times that the notice of deficiency was in the Cheney Post Office he had on file in such office an appropriate notice of forwarding address and that all mail was forwarded, except the notice of deficiency. Appellant argues that the failure to receive the notice is a direct result of the failure of the post office to forward the notice and that the lease should not be canceled.

Appellant also contends that he was not given adequate notice of the deficiency as prescribed by 43 CFR 1810.2 in that the post office failed to properly deliver the notice of deficiency.

The regulation under which BLM operated in canceling the lease is 43 CFR 3103.3-1, which reads:

> Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

BLM sent the bill for the additional rental, certified mail return receipt requested, to appellant's address of record, P.O. Box 73, Cheney, Washington, in late May 1976. The envelope was returned to BLM on June 7, 1976. After waiting more than the required 30 days, BLM canceled the lease on July 20, 1976.

[1] The question presented by this appeal is whether appellant had sufficient notice of the deficiency in the rental to invoke the provisions of 43 CFR 3103.3-1. We think not.

The pertinent regulation governing communications sent by mail is 43 CFR 1810.2(b). 2/ The regulation makes it clear that a person

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2/ Such regulation reads:

"Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or

will be deemed to have received a communication by mail if it was delivered to his last record address, regardless of whether it was in fact received by him. However, the second sentence of the regulation delineates the instances in which an offer of delivery will meet the requirements of the regulation where the attempt to deliver is substantiated by post office authorities. Those instances are when the offer of delivery cannot be consummated at the last record address because (1) the addressee had moved without leaving a forwarding address, (2) delivery was refused, or (3) no such address exists.

As pointed out by appellant, the intent of the regulation is apparently to protect BLM when the failure to realize delivery is the fault of the person to receive notice. Herein, the Cheney, Washington, address did exist, delivery was not refused, and appellant did not move without leaving a forwarding address.

Appellant had given appropriate notice that his mail be forwarded to Salt Lake City until April 1, 1976, and he asserts that he did, in fact, give notice that his mail continue to be forwarded until June 15, 1976, and that subsequent to April 1, 1976, all his mail was forwarded, except the notice that additional rental was due.

We are persuaded that appellant took the necessary precautions to have his mail forwarded to his Salt Lake City address and that the failure of the notice to be delivered to appellant was not the result of any action or inaction on the part of appellant. The fault must rest with the post office.

When appellant finally received notice of the deficiency in the form of the decision canceling the lease, he promptly tendered payment of the $7.00 deficiency. Therefore, appellant's nonpayment will be excused. BLM should accept his check for $7.00, and lease U-30602 should be reinstated.

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fn. 2 (continued)
because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded.

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Douglas E. Henriques
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Joseph W. Goss
Administrative Judge